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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,631	03/01/2000	PIERRE JEANVOINE	1247-0822-0V	4206

7590 08/14/2002

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EXAMINER

VINCENT, SEAN E

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 08/14/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/381,631	JEANVOINE ET AL.
	Examiner	Art Unit
	Sean E Vincent	1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 23 May 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 38-114 is/are pending in the application.

4a) Of the above claim(s) 41,47-49,51-55,57-76,79-97,99 and 107-114 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 38-40,42-46,50,56,77,78,98 and 100-106 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>15</u> .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

*Continued Prosecution Application*

1. The request filed on May 23, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/381631 is acceptable and a CPA has been established. An action on the CPA follows.

*Election/Restrictions*

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 38-40, 42-46, 50, 56, 77, 78, 98 and 100-106, drawn to process for melting vitrifiable materials, classified in class 65, subclass 134.4.
  - II. Claims 41, 47-49, 51-55, 79-85, 95 and 99, drawn to process for melting and refining vitrifiable materials, classified in class 65, subclass 135.1.
  - III. Claims 57, 72, 76, 93, 94 and 107-113, drawn to incinerating and melting apparatus, classified in class 110, subclass 235.
  - IV. Claims 58-71, 86-92, 96, 97 and 114, drawn to apparatus for refining vitrifiable material, classified in class 65, subclass 347.
  - V. Claims 73-75, drawn to a melting chamber apparatus, classified in class 432, subclass 238.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the

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subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the refining method does not require that combustion regions are developed in the mass of vitrifiable materials being melted. The subcombination has separate utility such as the production of porous vitreous products for construction materials.

4. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another materially different process such as iron smelting.

5. Inventions I and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another materially different process such as metal/slag separation.

6. Inventions I and V are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used in another materially different process such as CVD coating.

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7. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another materially different process such as iron smelting.

8. Inventions II and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another materially different process such as metal/slag separation.

9. Inventions II and V are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used in another materially different process such as CVD coating.

10. Inventions III and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as

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claimed because the refining apparatus does not require special injection means in the melting area. The subcombination has separate utility such as a means to produce porous metal.

11. Inventions III and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention V has separate utility such as a CVD furnace.

See MPEP § 806.05(d).

12. Inventions IV and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention V has separate utility such as a CVD furnace.

See MPEP § 806.05(d).

13. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

14. During a telephone conversation with Harris Pitlick on August 9, 2002 a provisional election was made with traverse to prosecute the invention of group I, claims 38-40, 42-46, 50, 56, 77, 78, 98 and 100-106. Affirmation of this election must be made by applicant in replying to this Office action. Claims 41, 47-49, 51-55, 57-76, 79-97, 99 and 107-114 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

15. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Information Disclosure Statement***

16. The information disclosure statement filed May 23, 2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but Zaytcev et al article has not been considered. Some US references were already cited.

***Claim Rejections - 35 USC § 102***

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claims 38-40, 42-46, 50, 56, 77, 78, 98 and 105 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Floyd et al (US 5615626). The features of applicant's claims can be found in the abstract, figures, col. 2, line 26 to col. 4, line 10; col. 5, line 34 to col. 6, line 60; col. 7, lines 39-48; col. 8, lines 6-38; col. 10, lines 20-35 and the example. The recitation of "municipal waste" in Floyd et al is considered to include various "glazings".

*Claim Rejections - 35 USC § 103*

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

20. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

21. Claims 100-104 and 106 rejected under 35 U.S.C. 103(a) as being unpatentable over Floyd et al in view of Dolf et al (US 3260587).

22. Floyd et al does not teach glass manufacturing processes *per se*. Floyd et al produced materials used in landfills or as building materials which were known to contain glassy phases (see Floyd et al, col. 6, liens 50-60). Dolf et al taught submerged combustion melting to process cullet and glass batch into glass products (see col. 1, lines 35-49). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the process of Floyd et al to produce any form of glass product because Dolf et al taught that the same melting techniques as Floyd et al were known for processing mostly glass materials such as cullet. A

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person of ordinary skill in the art would have expected that the proportion of glass produced in such a process depended directly from the proportion of glass charged into the process.

23. Floyd et al and Dolf et al do not expressly teach forming sheet, bottles, fibers or electronic parts. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to make any one of various known forms of glass products using the combined teachings of Floyd et al and Dolf et al because the intended use of the molten glass does not result in a manipulative difference as compared to the combined teachings of Floyd et al and Dolf et al to make molten glass.

#### *Response to Arguments*

24. Applicant's arguments filed May 23, 2002 have been fully considered but they are not persuasive.

25. In response to the argument that Floyd et al does not teach vitrifiable materials, the examiner disagrees. Recitations in Floyd et al of slag or flux constitute vitrifiable materials. This is made clearer by col. 6, lines 50-60 and also the table in col. 13 of Floyd et al.

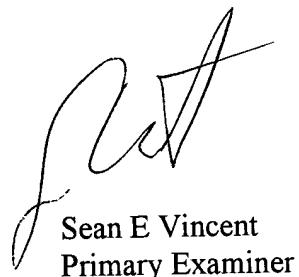
#### *Conclusion*

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E Vincent whose telephone number is 703-305-3607. The examiner can normally be reached on M - F (8:30 - 6:00) Second Monday Off.

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27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

28. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Sean E Vincent  
Primary Examiner  
Art Unit 1731

S Vincent  
August 12, 2002